IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.4.2007

CORAM:

THE HONOURABLE MR.JUSTICE DHARMARAO ELIPE
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Writ Petition Nos.28349, 28350 and 29180 of 2004

W.P.Nos.28349 and 28350 of 2004:

The Madras High Court Staff Association,
represented by its Secretary W.Solomon,
Chennai-104 .. Petitioner

Vs.

1.Government of Tamil Nadu,
rep.by The Chief Secretary to Government,
Secretariat, Chennai-600009.

2.Development Commissioner &
Principal Secretary to Government
Finance (Pay Cell) Department,
Secretariat, Chennai-600009.

3.The Accountant General (A&E),
Teynampet,
Chennai-600018.

4.The Registrar General,
High Court of Madras,
Chennai-600104. ... Respondents

W.P.No.29180 of 2004:

Government College Teachers" Manram (Tamil Nadu)
represented by its General Secretary
M.Mohamed Ibrahim,
No.4/8, Lenin Street,
Chitlapakkam,
Chennai-600064. ... Petitioner

Vs.

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1.Government of Tamil Nadu,
represented by The Chief Secretary to Government,
Secretariat, Chennai-600009.

2.Development Commissioner &
Principal Secretary to Government
Finance (Pay Cell) Department,
Secretariat, Chennai-600009.

3.The Accountant General (A&E),
Teynampet,
Chennai-600018. ... Respondents

* * *

W.P.No.28349 of 2004 has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Order in G.O.Ms.No.414 Finance (Pay Cell) Department, dated 31.7.2004 issued by the second respondent and quash the same and direct the first and second respondents to pay the entire arrears of pay revision for the period from 1.1.1996 to 31.3.1998 forthwith with interest at 12% p.a. from the date they became due and till the date of payment in cash.

W.P.No.28350 of 2004 has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order in G.O.Ms.No.413 Finance (Pay Cell) Department, dated 31.7.2004 issued by the second respondent and quash the same and direct the first and second respondents to pay the entire arrears of pay revision for the period from 1.1.1996 to 31.3.1998 to all those who retired during the period from 1.1.1996 to 31.3.2004 with interest at 12% in cash from the date they became due and till the date of payment in cash.

W.P.No.29180 of 2004 has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned Order in G.O.Ms.No.414 Finance (Pay Cell) Department dated 31.7.2004 issued by the second respondent and quash the same and direct the first and second respondents to pay the entire arrears of pay revision for the period from 1.1.1996 to 31.3.1998 to all the members of the petitioner Association who were in service during the said period in cash forthwith with interest at 12% p.a. from the dates they became due and till the date of payment.

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For petitioner in
all the W.Ps. : Mr.S.Namasivayam

For R.1, R.2 & R.4: Mr.R.Viduthalai, Advocate-General
For R.3 : Mr.T.Ravikumar

* * *

COMMON ORDER

DHARMARAO ELIPE, J.

The case of the petitioners is that in G.O.Ms.No.162 Finance (PC) Department dated 13.4.1998, orders were issued revising the pay and allowances of the State Government employees with effect from 1.1.1996. However, because the revision was notified only on 13.4.1998, the arrears for the period from 1.1.1996 to 31.3.1998 were not paid in cash, but ordered to be paid in instalments. It was ordered that employees would be paid net arrears (after adjustment of adhoc amounts paid earlier) of 20% in 1998-1999, the next 20% shall be drawn and paid in the next financial year (1999-2000) and the balance of 60% shall be paid in the year 2003-2004. In fact, in Letter No.33724/PC-I/98-1, dated 22.5.1998, it was ordered that 60% of the arrears of pay would be credited to the respective GPF account of the employees. It was also mentioned that in respect of those who would retire prior to 1.4.2003, the amount credited to GPF account together with interest thereon will be released only in the year 2003-2004 and the final withdrawal shall be allowed at the time of retirement excluding 60% of arrears with interest.

2. It is further submitted by the petitioners that only 20% of pay and pensionary arrears were released to the retired Government employees in 1998 and another 20% in 1999; that the respondents have failed to make the balance payment and still no amount has been paid even after the assured date of 2003-2004 has passed; that by a Letter No.4157/PC/2004-I, dated 30.3.2004, the second respondent had directed that in the case of deceased employees, the entire amount of arrears of difference in gratuity and commutation be paid to the legal heirs in cash with interest, however the arrears of leave salary and pay revision shall bear no interest from 1.4.2003; that the procedure of payment of interest on delayed payment of gratuity has been in vogue for almost 30 years from 23.11.1973 and the action of the respondent in denying the same is against all established principles and practices; that the principle was found acceptance under Section 8 of the Payment of Gratuity Act, 1972 and for delayed payment interest at the rate of 9% p.a. has been provided therein; that various Associations have made repeated representations to the respondents; by the impugned G.Os., now the respondents have ordered that 60% of the arrears of pay and allowances with interest worked out upto 31.3.2003 will be blocked into a non-interest bearing account from 1.4.2003 and paid in the

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form of Small Savings Scripts in three annual installments starting from 2004-2005; that the GPF Rules stipulate that even transfer of funds between two sets of Provident Fund accounts of an employee shall be effected only on the basis of a written consent of the employee and the direction to the Accountant General (A&E) in the impugned order to transfer accumulation in the GPF Account to a non-interest bearing public deposit account is in violation of the GPF Rules 1956 and is per se illegal; that denial of interest on the deposits held in the GPF Account is violative of Rule 13 of the GPF Rules; that while the Government is charging interest from the employees on the loans and advances obtained by them, denial of interest on the money of the employees held by the Government is a blatant illustration of unjust enrichment by the Government; that the accruals in the General Provident Fund Accounts of the State Government employees are held by the Government in the capacity of a trustee and any action in violation of trust tantamount to breach of trust.

3. While the respondents 1,2 and 4 have filed a common counter and also an additional counter, the third respondent has filed a separate counter. The main ground of the official respondents in their counters is that the arrears amount with interest accumulated to nearly Rs.1800/= crores in the year 2003-2004, therefore, it was not possible for the State Government to pay such huge arrears in one lumpsum in view of difficult financial position of the State and taking into consideration all the relevant factors, the Government had taken a revised policy decision and decided to pay the balance amount of 60% arrears of gratuity, commutation, leave salary along with interest from 1.4.1998 arrived upto 31.3.2004 in three equal annual instalments with interest in cash starting from the financial year 2004-2005 and the whole payment will be completed in three years i.e. by the financial year 2006-2007 and hence they are not arbitrary, discriminatory and violative of the fundamental rights of the members of the petitioners association, as alleged; that the power available to the executive to frame a policy at a particular point of time need not and will not bind it forever and it can revise the policy with reference to the changed circumstances; that if the financial position of the State is not in a position to meet the commitments made, the Government can definitely consider making a revised decision and announcing it to make it known to all concerned; that in the case of pay commission arrears, it was only a commitment made by the Government and no funds were in hand to utilise it to other areas; that it is only when the interst on Pay Commission arrears were cropping up in heaps and bounds, which was beyond the control of Government, there was no other alternative but to transfer the arrears to the non-interest bearing deposit head of account with a view to avoid further accumulation of interest and further burden on the State Exchequer; that due to financial constraints on the State Exchequer, the Government was compelled to transfer the 60% Pay Commission arrears along with interest upto 31.3.2003 to the non-interest bearing deposit head of account to avoid further accumulation of isnterst on the pay commission arrears, which is well within the executive powers

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of the State; that as the payment of arrears had nexus with the cash flow, the action of the Government to take a revised policy decision has to be appreciated in the right perspective; that if the plea of the petitioner association is considered, then the same have to be extended to all the serving employees also till the final payment is made to them in 2008-2009 and the additional interest commitment on the 60% of pay commission arrears of Rs.1035.29 crores at 8% p.a. works out to Rs.516.32 crores; that the cut-off date prescribed by the Government for payment of interest on 60% pay commission arrears as upto 31.3.2003 is reasonable and not arbitrary, since the funds have to be mobilised and paid to the employees based on the commitment made by Government from time to time.

4. During arguments, the learned Advocate-General stressed on the point that due to financial restrains, the Government has decided to pay the pay commission arrears in instalments and transferred the 60% pay commission arrears along with interest upto 31.3.2003 to the non-interest bearing deposit head of account to avoid further accumulation of interest. To support the case of the respondents in earmarking the cut-off date as 31.3.2003, the learned Advocate-General has relied on the judgments of the Apex Court in (1) T.N.ELECTRICITY BOARD vs. R.VEERASAMY AND OTHERS [(1999) 3 SCC 414] and (2) STATE OF BIHAR AND OTHERS vs. BIHAR PENSIONERS SAMAJ [(2006) 5 SCC 65].

5. On the contrary, the learned counsel for the petitioners submitted that financial inability cannot be a legally sustainable reason to evade payment of arrears and relied on a Division Bench judgment of this Court in THE MADRAS HIGH COURT STAFF ASSOCIATION, REPRESENTED BY ITS SECRETARY, Mr.W.SOLOMON, CHENNAI vs. GOVERNMENT OF TAMIL NADU, REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT, SECREATARIAT, CHENNAI AND OTHERS (2004-I-MLJ 223).

6. Considering all the facts and circumstances of the case and upon hearing the learned counsel for both, the point that arises for consideration is 'whether the respondents are justified in transferring the pay commission arrears payable to each employee calculated upto 31.3.2003 with interest to a non-interest bearing public deposit account'?

7. Provident Fund is an effective old-age survivorship benefit and a beneficent measure enacted by the Government for the welfare of the employees. It is intended for the better future of the employees on their retirement and also for their dependents in the event of the death of the employee, during his employment. A Government servant, who is continuously employed for not less than six months, will be required to subscribe to the Provident Fund, irrespective of the fact whether he is a temporary or a regular Government servant. The contribution by an employee towards the Provident Fund is compulsory in nature and the minimum rate of subscription, fixed by the Authorities, is payable by each subscriber based on his emoluments. Voluntary increase of the subscription over and above the rate of subscription is made permissible

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by an employee, but not to reduce the subscription below the minimum rate of subscription. The payment of subscription, withdrawal and all other matters connected to the Provident Fund are governed by the Provident Funds Act, 1925 and the General Provident Fund (Tamil Nadu) Rules framed by the Government of Tamil nadu in exercise of the powers conferred by Rules 41, 42 and 44(d) of the Civil Services (classification, Control and Appeal) Rules. (so far as the employees of the Tamil Nadu State Government are concerned).

8. Provident Fund is intended to provide for the welfare and financial security of the contributor-employee. The moment the contribution is terminated, the person concerned becomes entitled to get the amount with the accrued interest. If there is delay, the custodian viz. the Government cannot morally and legally claim the unjust enrichment accruing on the contribution by way of interest on the amount contributed and lying in the credit of the employee. Being governed by the statute, it is a compulsory deposit payable only after completion of service. True, the rules provide for advances. Therefore, the Government is only the custodian. The custodian has to respect the trust and it shall not misappropriate.

9. When such is the avowed object of the introduction of the General Provident Fund by the Government to its employees, making it a compulsory subscription, even to the temporary employees, a duty is cast upon the Government to maintain the said fund, a life saving of the employees, properly, keeping up their promise of paying interest, at the rate fixed by the Government itself, to all the payments made by the employees towards the contribution to the Provident Fund and any deviation from the said promise would not only be detrimental to the interest of the employees, but also a promissory estoppel for the Government.

10. Doctrine of 'promissory estopel' has been evolved by the courts, on the principles of equity, to avoid injustice. The doctrine of 'promissory estoppel' or 'equitable estoppel' is well established in the administrative law of the country. The doctrine represents a principle evolved by equity to avoid injustice. The basis of the doctrine is that where any party has by his word or conduct made to the other party an unequivocal promise or representation by word or conduct, which is intended to create legal relations or effect a legal relationship to arise in the future, knowing as well as intending that the representation, assurance of the promise would be acted upon by the other party to whom it has been made and has in fact been so acted upon by the other party, the promise, assurance or representation should be binding on the party making it and that party should not be permitted to go back upon it, if it would be inequitable to allow him to do so, having regard to the dealings, which have taken place or are intended to take place between the parties. It has been settled by the Court of law that the doctrine of promissory estoppel is applicable against the Government also particularly where it is

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necessary to prevent fraud or manifest injustice.

11. In MOTILAL PADAMPAT SUGAR MILLS CO.LTD. Vs. STATE OF U.P. [(1979) 2 SCC 409], the doctrine of promissory estoppel was applied to the executive action of the State Government and also denied t the State the doctrine of executive necessity as a valid defence. It was held that 'in a republic governed by the rule of law, no one high or low, is above the law. Every one is subject to the law as fully and completely as any other and the government is no exception. The Government cannot claim immunity from the doctrine of promissory estoppel'.

12. In the case on hand, though the Government has offered interest for the pay commission arrears till 31.3.2003, thereafter, they have transferred the said amounts to a non-interest bearing accounts, which caused grievance to the petitioners. The only strong plea raised on the part of the Government is financial constraints on the part of the Government. The learned Advocate-General relied on the judgment of a Three Judge Bench of the Apex Court in T.N.ELECTRICITY BOARD vs. R.VEERASAMY AND OTHERS [(1999) 3 SCC 414], wherein while considering the question 'whether the appellant Electricity Board was bound to extend benefit of pension scheme introduced by it w.e.f. 1.7.1986 to all employees, who already stood retired before this date and had availed of benefit of contributory Provident Fund Scheme (CPF Scheme)', the Apex Court has held that 'the appellant-Board has not acted illegally or contrary to law in introducing pension scheme prospectively from 1.7.1986 and the employees who retired before 1.7.1986 cannot compel the appellant-Board to extend benefit of pension scheme with retrospective effect.'

13. This judgment can be factually distinguishable from the facts of the case on hand. In the case on hand, the Government has, all of a sudden, transferred the pay commission arrears of the employees to a non-interest bearing account, after 31.3.2003. It is to be mentioned that all along the amount is lying in the GPF Account of the employees, in other words, under the control of the Government. It is not the question of giving a retrospective application to a Scheme, as was in the case before the Supreme Court, but only an arbitrary exercise of the power by the Government in going back their promise, without notice or intimation to any of the subscriber. Therefore, the above judgment of the Apex Court is in no way helpful to the case of the Government.

14. Likewise, the learned Advocate-General also relied on a judgment of the Apex Court in STATE OF BIHAR AND OTHERS vs. BIHAR PENSIONERS SAMAJ [(2006) 5 SCC 65], wherein, when the State Government declined to pay the arrears from 1.1.1986 on the ground of financial consideration, the Apex Court held that 'fixing of a cut-off date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.'

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15. We are in conformity with the proposition of law that the State Government has power to fix a cut-off date. But, in this case, on the ground of financial constrains, the Government has not paid the pay commission arrears to the employees, but deposited them in the individual Provident Fund accounts of the employees in a interest bearing account. But, suddenly and arbitrarily, the amounts were ordered to be transferred to a non-interest bearing account. As has already been observed, it has been done in an arbitrary exercise of the power by the Government, by going back their promise, without notice or intimation to any of the subscriber. Therefore, the above judgment of the Apex Court cannot be made applicable to the facts of the case and the same is well distinguishable from the facts of the case.

16. The learned Advocate General strongly contended that there is no culpable delay or intention on the part of the Government to deny interest to the employees. It is not the question of culpability or bona fide delay that should be considered, but the curtailment of an existing right of a Government servant, without affording any opportunity of being heard to him.

17. In STATE OF MADHYA PRADESH vs. RANOJIRAO SHINDE AND ANOTHER (AIR 1968 SC 1053), the Constitutional Bench of the Supreme Court has held that:

> "Any legislation which empowers the State to appropriate someone else's property for itself solely with a view to augment the resources of the State Government cannot be construed as a reasonable restriction in the interest of the general public.... If Art.19(5) is interpreted to mean that the State can take by authority of law anyone's property for the purpose of increasing its estates or revenues guarantee given by the Art.19(1)(f) would become illusory."

18. In HINDUSTAN PETROLEUM CORPORATION LIMITED vs. H.L.TREHAN AND OTHERS etc. [(1989) 1 SCC 764, the Apex court has held that

> "There can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a Government Servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard and that any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a Government servant will offend against the provision of Art.14 of the constitution."

19. By applying the above principles laid down by the Apex Court, it can be held that the Government cannot enrich itself at the cost of its employees i.e. by denying the interest on the Pay Commission arrears deposited to the respective Provident Fund accounts of the employees, without giving any opportunity for the employees to putforth their

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grievances. Thus, the actions of the Government are hit by their arbitrary and whimsical exercise of powers.

20. The other ground raised on the part of the respondents is that out of about 12 lakh employees, excluding the petitioner Association, who are around 1500 members, the other employees have fully appreciated the huge financial burden on the State exchequer and the policy of the Government to allow interest on 60% Pay Commission arrears only upto 31.3.2003 and to make payments of the said arrears to all the serving employees in three instalments commencing from August 2007 and as such, the plea of the petitioners to allow interest does not deserve consideration. The argument of the respondents appears to be that 'might is right'. Just for the reason that other employees of the Government have not raised such an issue before this Court, it cannot be said that the rights of the employees, agitated by the persons aware of it, should be denied on such a flimsy stand of the Government that might is right. Therefore, we are unable to appreciate the stand taken by the Government.

21. Except to mention that there are financial constrains on the part of the Government, no acceptable reason has been offered on the part of the Government for transferring the amounts to a non-interest bearing account. It is also a well established principle of law now that financial inability cannot be a legally sustainable reason for the Government to go against their promise and denying the legally flown benefits of its employees.

22. The learned Advocate-General also brought to our notice that now the Government has permitted the employees to withdraw the pay revision arrears in three equal annual instalments in cash commencing from August, 2006. But, however, we are unable to appreciate action taken by the Government in transferring the amounts of the employees to a non-interest bearing account, from a interest bearing account much against the interest of the employees and going back its own promise.

23. The learned Advocate General contended that if the plea of the petitioner association is considered, then the same have to be extended to all the serving employees also till the final payment is made to them in 2008-2009 and the additional interest commitment on the 60% of Pay Commission Arrears of Rs.1035.29 crores at 8% p.a. interest works out to Rs.516.32 crores since a large number of employees were involved and therefore, the cost will be heavy. A similar type of submission was well meted out and nullified by the Apex Court in KATHEEJA BAI vs. SUPERINTENDING ENGINEER [(1984) 3 SCC 518] wherein it has been held:

> "There was then the usual lament that a large number of employees were involved and, therefore, the cost will be heavy. We do not understand this argument at all. Does it mean that beneficent legislations and beneficent schemes must be confined

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> to small establishments employing a few workers only? On the other hand, it is misleading to say that the cost is heavy. The cost is made to appear heavy divorced from the size of the establishment. If the establishment is huge and if a large number of workmen are employed , the total wage-bill may appear to be heavy, but is it really so? Is it disproportionate to the size of the establishment, its resources, its revenues and its other expenditure? Is the individual wage-bill also very high? To talk of heavy cost without reference to other circumstances is to present an entirely unfaithful picture. We need make no further comment."

We need not have to add anything further to reject the argument of the learned Advocate General and as already adverted to above, the above judgment of the Apex Court is a straight answer to the argument advanced by the learned Advocate General.

24. The learned Advocate General also contended that it is a policy decision of the Government to transfer the amounts to a non-interest bearing account. In this context, it is to be mentioned that it is now a well established principle of law that there are no excluded categories of State policy or practice, which can claim exemption from the judicial consideration, vide O.KONALOV vs. COMMANDER, COAST GUARD REGION [(2006) 4 SCC 620].

25. For all these reasons, all these writ petitions deserve to be allowed and the Government is liable to pay the interest, according to the Rules prevailing on the date of due.

In the result, all these writ petitions are allowed. The Government is directed to re-transfer the arrears of the pay commission of the employees to a interest-bearing account and pay the interest, according to the G.P.F. interest rates prevailing on the date of due. No costs.

Rao

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

1.The Chief Secretary to Government of Tamil Nadu,
Secretariat,Fort St. George, Chennai-600009.

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3.The Accountant General (A&E),
Teynampet,
Chennai-600018.

4.The Registrar General,
High Court of Madras,
Chennai-600104.

+ 2 CCs to Mr. S. Namasivayam Advocate sR 23641 & 23642
+ One cc to Mr. T. Ravi Kumar, ACGSC (SR 24110)
+ 2 CC to Govt Pleader SR 24077, 24078
RS (co)
sg 17/4/07

Pre-delivery
Common Order in W.P.Nos.28349,
28350 and 29180 of 2004.
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